IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

WP(C).No. 27025 of 2005(P)

AGAINST THE ORDER IN EP. 146/2004 IN
OS.19/1999 OF MUNSIFF MAGISTRATE COURT,MANNARKAD
.....

PETITIONER:

SHEEJA, AGED 34 YEARS,
W/O.SHAJU, PERIMBADARI DESOM,
ARUKURUSSI AMSOM, MANNARKAD TALUK.

BY ADV. SRI.RAJIT.

RESPONDENT:

SHALINI, AGED 36 YEARS,
D/O.POOKUTH AYYAPPAN, PERIMBADARI DESOM,
ARAKURUSSI AMSOM, MANNARKAD TALUK.

BY ADV. SRI.JACOB SEBASTIAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.27025/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE E.P. 146/04 IN O.S. 19/99 BEFORE THE MUNSIFF COURT, MANNARKKAD.

EXT.P.2: COPY OF THE RECEIPT ISSUED BY THE RESPONDENT.

EXT.P.3: COPY OF THE COUNTER FILED BY THE RESPONDENT.

EXT.P.4: COPY OF THE ORDER DTD. 26/07/2005 IN E.P.-146/04 IN O.S. 19/99 OF MUNSIFF-MAGISTRATE COURT, MANNARKAD.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

M.N.KRISHNAN, J

==========

W.P.(C) No.27025 OF 2005

==========

Dated this the 30th day of July, 2007

JUDGMENT

This writ petition is filed to set aside Ext.P4 order passed by the Munsiff-Magistrate's Court, Mannarkad. The contention of the judgment debtor is to the effect that after the decree on 20.8.2001, she had paid Rs.70,000/- to the decree holder and thereby discharged the entire decree debt. But the court did not accept it on the ground that it is an uncertified payment of money, which is not recorded by the court under Order XXI Rule 2 of the Code of Civil Procedure. It has to be stated that unnecessarily this writ petition has been dragged on this court for some time because the name of the respondent in the writ petition is shown incorrectly. The real name is 'Shaini' and it is shown as 'Shalini'. When the judgment debtor raises a contention that the liability pursuant to the decree had been wiped off and in support of the same, she had produced a receipt. Therefore the court is bound to conduct an enquiry about the correctness or truthfulness of the same and pass appropriate orders. The court shall not reject a plea of discharge after the decree merely on technical aspects.

Therefore the order under challenge is set aside and the learned Munsiff-Magistrate is directed to permit both the parties to adduce evidence in support of their contentions regarding the plea of payment after the decree by the judgment debtor. Parties are directed to appear before the court below on 6.9.2007.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-